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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/675,726
Filing Date: September 30, 2003
Appellant(s): ALLEN ET AL.

IBM Corporation
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/08/2008 appealing from the Office action mailed 09/12/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
2. Claims 1-5 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
3. Independent claim 1 directed to “A service level agreement (SLA) breach value estimator comprising: a communicative coupling...; and a further communicative coupling...; and at least one SLA breach value estimation process” is nonstatutory as it does not recite any hardware elements that enable the claimed process to realize its functionality as a computer component.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 2444

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Betge-Brezetz et al. (U.S. Pat. App. Pub. 2005/0177629), hereinafter referred to as Betge.

6. Regarding claim 1, Betge disclosed a method and system comprising a communicative coupling to data produced for at least one resource (“data representative of usage of resources”, paragraph [0010]); and, a further communicative coupling to a user interface through which an SLA breach value estimate is proposed (“network evolution planning proposal”, paragraph [0010], [0011]; “user interface”, paragraph [0017]; “a graphical user interface...for displaying the planning proposals generated”, paragraph [0045]); and, at least one SLA breach value estimation process selected from the group consisting of an aggregated process, a specific customer process, a customer resource subset process, and a predictive process (paragraph [0013]-[0015]).

Art Unit: 2444

7. Regarding claim 2, Betge disclosed the method and system wherein the estimator is disposed within an SLA builder (paragraph [0018], [0042]).
8. Regarding claim 3, Betge disclosed the method and system further comprising a graphical user interface configured to render a chart of resource data over time derived from said produced data along with an indication of a current SLA breach value setting a proposed SLA breach value setting (paragraph [0017], [0045], [0048], [0051], [0066]-[0070]).
9. Regarding claim 4, Betge disclosed the method and system wherein said proposed SLA breach value setting comprises a programmatic configuration for being graphically modified to establish a new SLA breach value setting (paragraph [0017], [0045], [0048], [0051]).
10. Regarding claim 5, Betge disclosed the method and system further comprising a compliance process disposed within said SLA breach value estimation process, said compliance process comprising logic for proposing an SLA breach value estimate computed to render probable SLA compliance for a percentage of time equivalent to a specified compliance value (paragraph [0057]-[0061]); and, a compliance interface through which said compliance value can be specified (paragraph [0017], [0045], [0048], [0051]).
11. Regarding claims 6 and 15, Betge disclosed a method and system comprising processing resource data to identify an acceptable SLA breach value (“data representative of usage of resources”, paragraph [0010]); and, displaying said

Art Unit: 2444

acceptable SLA breach value through a user interface (paragraph [0017], [0045], [0048], [0051], [0066]-[0070]).

12. Regarding claims 7 and 16, Betge disclosed the method and system wherein said processing comprises identifying a best practices SLA breach value based upon resource data for an aggregation of customers (“network evolution planning proposal”, paragraph [0010], [0011]; “aggregation”, paragraph [0051]).

13. Regarding claims 8 and 17, Betge disclosed the method and system wherein said processing comprises identifying an average SLA breach value for a specific customer (paragraph [0049]-[0050]).

14. Regarding claims 9 and 18, Betge disclosed the method and system wherein said identifying comprises identifying an average SLA breach value for a specific customer for a specific resource (paragraph [0049]-[0050]).

15. Regarding claims 10 and 19, Betge disclosed the method and system wherein said processing comprises identifying an SLA breach value trend based upon past measured performance data (paragraph [0044]-[0049]); and, predicting a future SLA breach value based upon said trend (paragraph [0044]-[0049]).

16. Regarding claims 11 and 20, Betge disclosed the method and system wherein said processing further comprises increasing said acceptable SLA breach value by a fixed proportion (paragraph [0058]).

17. Regarding claims 12 and 21, Betge disclosed the method and system further comprising rendering a chart of said resource data against a period of time in a graphical user interface (paragraph [0017], [0045], [0048], [0051], [0066]-[0070]); and

Art Unit: 2444

overlaying an indicator both of a current SLA breach value and a proposed SLA breach value about said rendered chart (paragraph [0017], [0045], [0048], [0051], [0066]-[0070]).

18. Regarding claims 13 and 22, Betge disclosed the method and system further comprising permitting the graphical manipulation of said indicator of said proposed SLA breach value (paragraph [0017], [0045], [0048], [0051]); and, establishing an SLA breach value based upon said graphical manipulation (paragraph [0017], [0045], [0048], [0051]).

19. Regarding claims 14 and 23, Betge disclosed the method and system further comprising establishing a compliance percentage (paragraph [0057]-[0061]); and, computing said acceptable SLA breach value so that SLA compliance is probable for a percentage of time equivalent to said compliance percentage (paragraph [0057]-[0061]).

(10) Response to Argument

The examiner summarizes the various points raised by the appellant and addresses replies individually.

As per appellant, Betge-Brezetz has failed to produce any evidence that the communicative coupling is an “abstract idea or software” (Argument A, see brief page 5 lines 25-26.)

In response to A), in Applicant's specification page 12 lines 3-4, "the present invention can be realized in hardware, **software** or a combination of both hardware and software." The specification explicitly states that the invention can be made entirely of software. Secondly, since there is no explicit definition of what a "communicative coupling" is in the claims or even in the specification; it is thus concluded that the claimed invention is geared to software per se. Furthermore "a communicative coupling" is only mentioned on page 4 lines 4-7 of Applicant's specification which is similarly represented as such in claim 1. Thus the claims 1-5 are in fact geared towards software per se.

As per appellant, Betge-Brezetz does not teach the claimed "SLA breach value estimate" of the claimed invention (Argument B, see brief page 8 lines 11-13.)

In response to B), in Applicant's specification, page 8 lines 10-12, "the SLA breach value estimate can be produced by extrapolating existing data to predict future data". Betge-Brezetz discloses this limitation in its entirety in paragraphs [0046] – [0052] and [0078]. Specifically, paragraphs [0048] discloses future types of service level agreements likely to be entered into by the network operator and a current or a future customer with an prediction of what the service level terms will be. Further in paragraphs [0049], Betge-Brezetz discloses an aggregation module which takes service level agreement usage profiles and future requirements in order to provide a predication, an estimate, of the agreement parameters one of which is a value/threshold

Art Unit: 2444

in which the service level agreement will be breached. Betge-Brezetz thus discloses a future prediction of all parameters in a SLA including an estimate of a breach value, a SLA breach value estimate.

As per appellant, Betge-Brezetz does not teach the claimed " at least one SLA breach value estimation process selected from group consisting of an aggregated process, a specific customer process, a customer resource subset process, and a predictive process" of the claimed invention (Argument C, see brief page 10 lines 3-5.)

In response to C), Betge-Brezetz does indeed disclose this limitation in its entirety in paragraphs [0048]-[0050]. Betge-Brezetz discloses an aggregation module which aggregates all service level agreement usage profiles and future SLA parameter requirements in order to produce SLA parameters breach value estimation, paragraphs [0048] - [0049]. Betge-Brezetz discloses an **aggregation module** which takes service level agreement usage profiles and future requirements in order to provide a predication, an estimate, of the agreement parameters one of which is a value/threshold in which the service level agreement will be breached which covers the scope of the claim limitation as currently presented, "**at least one** SLA breach value estimation process selected from group consisting of an **aggregated process**, a specific customer process, a customer resource subset process, and a predictive process." Thus the reference meets the scope of the claimed limitations as currently presented.

As per appellant, Betge-Brezetz does not teach the claimed "wherein the estimator is disposed within an SLA builder" of the claimed invention (Argument D, see brief page 11 lines 17-19.)

In response to D), Betge-Brezetz discloses a wherein the estimator is disposed within an SLA builder at least in paragraphs [0048] – [0050], [0078], and [0081]. In paragraphs [0078] Betge-Brezetz discloses that the network manager of the invention can "define better the terms of the service level agreements (SLA) that it has to enter into with its future customers..." SLA's will be built in order to take into account these newly defined parameters. Betge-Brezetz's paragraph [0081] states that the invention can be used to create (build) service level agreements and also vary the definitions of the service level agreements in order to optimize the SLA. In varying the definitions of the service level agreements, new SLA's will be built. Thus the reference meets the scope of the claimed limitations as currently presented.

As per appellant, Betge-Brezetz does not teach the claimed "current SLA breach value setting and proposed SLA breach value" of the claimed invention (Argument E, see brief page 13 lines 1-2.)

In response to E), Betge-Brezetz discloses this limitation in paragraph [0048] – [0050], [0078] and [0081]. Specifically, Betge-Brezetz discloses in [0049] future types of service level agreements likely to be entered into by the network operator and a current

Art Unit: 2444

or a future customer with a prediction of what the service level terms will be (a proposed SLA breach Value). Betge-Brezetz further discloses in paragraphs [0048] – [0050], [0078] and [0081], that a network manager is allowed to define "better the terms of the service level agreements (SLA) that it has to enter into with its future customers, taking into account the existing network, and the terms of the service level agreements that it must enter into with its future customers..." In order to better define the terms of the SLA's, a current SLA breach value setting, a parameter of the SLA, is necessary. Thus the reference teaches both a current SLA breach value setting and a proposed SLA breach value.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Ninos Donabed/

Examiner, Art Unit 2444

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444

Conferees:

/William C. Vaughn, Jr./

Application/Control Number: 10/675,726

Page 12

Art Unit: 2444

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